

REMARKS

Objections to the Specification

In paragraph 2 on page 2 of the *Office Action*, the Examiner objected to the cross-references section of the application. Per the Examiner's request, the co-pending application status has been updated. As such, the Applicants believe the Examiner's objection to have been overcome.

Rejections Under 35 U.S.C. § 112, ¶ 2

In paragraph 3 on page 2 of the *Office Action*, the Examiner rejected claims 2, 17, and 26 under 35 U.S.C. § 112, ¶ 2 as lacking insufficient antecedent basis for the claim limitation "the frequency." Applicants have amended claims 2, 17, and 26 to provide for proper antecedent basis; as such, the Applicants believe the rejection to be overcome.

Further, in paragraph 3 of the *Office Action*, the Examiner rejected claims 3, 18, and 27 under 35 U.S.C. § 112, ¶ 2 as lacking insufficient antecedent basis for the claim limitation "the amount of data read." Applicants have amended claims 3, 27 and 18 to provide for proper antecedent basis. As such, the Applicants believe the rejection to be overcome.

Rejections Under 35 U.S.C. § 103

The Examiner rejected claims 1-6, 9-12, 16-21 and 25-30 under 35 U.S.C. § 103(a) "as being unpatentable over Williams et al. (US#6,715,007) [*Williams*] in view of Merchant et al. (US#5,933,413) [*Merchant*]." *Office Action*, p. 3 at ¶ 6. The Examiner's rejection of these claims covers the four independent claims presently pending in the application (1, 9, 16, and 25). The Examiner contends claims 1-6 and 9-12 are "method claims corresponding to the apparatus claims [16-21 and 25-30]." *Office Action*, p. 5 at ¶

6. The Examiner has, therefore, “analyzed and rejected [claims 1-6 and 9-12] as . . . discussed with respect to claims 16-19 and 25-28.” *Office Action*, p. 5.

The Examiner contends, with regard to claim 16-19 and 25-28, that “Williams discloses in Fig. 1 a block diagram illustrat[ing] the data flow regulation in communication systems, in which the data rate is established in each of a data source (24) and a data sink (28).” *Office Action*, p. 4. The Examiner further notes that while “Williams does not expressly disclose the amount of available space in the receive buffer is maintained at a regulated value . . . Maechant et al. (sic) (US#5,933,413) discloses a network interface capable of allocating bus interface and buffer resources in a host computer system to improve network and system throughput.” *Office Action*, p. 4.

Independent claims 16 and 25, however, also recite a ‘transfer management module configured to regulate the rate at which data is delivered to the receive buffer based on priority of the data.’ See, *supra*, p. 6, 8. For example, data can be “given a priority such that it does not interfere with other traffic on network 530.” *Specification*, p. 9, l. 24-25. That is, the transfer of a particular piece of data may be of such low priority that any and all other data transfers take priority over this particular piece of data. Alternatively, the data can be of such high priority, that it supersedes the transfer of any and all other data transfers over the same network. Similarly, “[t]he selected priority levels [may] result[] in an absolute transfer rate or [a rate that] is responsive to other factors such as the total amount of traffic receiver 520 is receiving or the number of dropped packets experienced in the transfer.” *Specification*, p. 9, l. 26-28. These factors may include, but are not necessarily limited to, other traffic on the network or particular traffic present at a receiver. See *Specification*, p. 9, l. 30. This aspect of the claimed invention is not found anywhere in the *Williams* and *Merchant* references cited by the Examiner.

The same holds true for the only other reference utilized by the Examiner as evidencing the purported lack of non-obviousness in the present application. While the Examiner suggests that U.S. patent number 6,038,216 to Packer (*Packer*) “discloses a method for controlling data rate of data packets in a digital data packet communication

environment,” in conjunction with the rejection of paragraph 7, there is no suggestion that *Packer* also teaches the aforementioned module regulating data delivery based on priority. *Office Action*, p. 6. For example, while *Packer* discloses “a rate control device 26 which is operative to control the rate at which a TCP transmitter can emit packets,” this does not suggest (either expressly or inherently) the control of data rates based on priority. *Packer*, col. 3, l. 61-63. Similarly, the “establish[ment of] a limit on [an] explicit rate of emission of packets” and/or “the timing of transmission of [an] acknowledgement packet” do not suggest the presence of such a management module as configured in claims 16 and 25. *Packer*, col. 4, l. 44, 46-47. *Packer*’s discussion or ‘direct feedback rate control’ cannot be interpreted as regulating the delivery of data based on priority in that the rate control, at best, influences scheduling—not priority. See, generally, *Packer*, col. 9, l. 34 *et seq.*

The concept of scheduling should not be confused with that of priority. See *In re Okuzawa*, 537 F.2d 545, 548 (CCPA 1976) (concerning plain and ordinary meaning of claim terms); see also *MPEP* § 2111.01; c.f. *MPEP* § 2131.01(II). **Scheduling** is generally understood as “to place in a schedule” or “to make a schedule of.” *Merriam-Webster Online Dictionary* (schedule). Schedule is also understood to mean “to appoint, assign, or designate for a fixed time.” *Merriam-Webster Online Dictionary* (schedule). Assignment of **priority**, on the other hand, is to have “superiority in rank, position of privilege”; “a preferential rating.” *Merriam-Webster Online Dictionary* (priority).

In the context of the present invention, for example, data ‘A’ can be scheduled to be delivered to a particular location over a particular transmission channel by a particular time. This will, for example, embody the concept of scheduling. Another piece of data—data ‘B’—may not necessarily *need* to be delivered to a particular recipient until several hours after data ‘A.’ If data ‘B’ is assigned higher priority than data ‘A,’ however, then data ‘B’ may be delivered to its particular recipient prior to that of data ‘A’ notwithstanding the fact that data ‘B’ may have several hours remaining in which achievement of on-time delivery is possible.

For the foregoing discussion, Applicants believe the Examiner's rejection of claims 16 and 25 has been overcome. Claims 17-24 and 37 and claims 26-33 and 36 depend either directly or via an intermediate dependent claim upon claims 16 and 25, respectively. As a dependent claim "incorporates by reference all the limitations of the claim to which it refers," these claims are allowable for at least the same reasons as claims 16 and 25. 35 U.S.C. § 112, ¶ 4; see *In re Fine*, 837 F.2d 1071 (Fed. Cir. 1988) (finding if any independent claim is non-obvious, then all dependent claims therefrom are also non-obvious).

Additionally, as the Examiner "analyzed and rejected claims 1-6 and 9-12 as . . . discussed with respect to claims 16-19 and 25-28," and claims 1 and 9 exhibit limitations similar to those of claim 16 and 25, the Applicants believe these claims to be allowable for at least the same reasons. *Office Action*, p. 5. Since claims 2-8 and 10-15 depend either directly or via an intermediate dependent claim upon claims 1 and 9, respectively, these claims are allowable for at least the same reasons as claims 1 and 9. See 35 U.S.C. § 112, ¶ 4 and *In re Fine*, 837 F.2d 1071.


CONCLUSION

Applicants believe the Examiner's 35 U.S.C. § 103 rejection have been overcome in their entirety in that the cited references—either individually or in combination—fail to teach each and every limitations of the claims as amended. Allowance of the present application is therefore requested. If the Examiner has any questions concerning the present application, the Examiner is invited to contact the Applicant's undersigned representative.

Respectfully submitted,
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